

**IN THE COURT OF APPEALS OF IOWA**

No. 0-349 / 09-1185  
Filed June 30, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JOHNATHAN LAWRENCE ROSE,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Clinton County, Charles H. Pelton,  
Judge.

Johnathan Rose appeals from his conviction for domestic abuse assault,  
third offense. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney  
General, Michael L. Wolf, County Attorney, and Elizabeth Srp, Assistant County  
Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J.  
takes no part.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

On March 6, 2009, Brittany Pladna left her two-year-old son with Sandy Rose. Sandy is the aunt of Johnathan Rose (Rose), who is the father of Pladna's son. Pladna and Rose were not on speaking terms on the date of this incident. Pladna returned with her sister Danielle and her friend Dymetri to Sandy's house to pick up her son. When she arrived at Sandy's house, Pladna found Rose's sister Krystal holding her son near Rose's mother, Monica, who was sitting in her car. This angered Pladna because she did not get along with Krystal or Monica.

Pladna exchanged heated words with Monica and Krystal and approached Krystal to retrieve her son. Seven individuals witnessed the events that followed, but their stories are inconsistent. However, it is clear from the record that at some point, Rose became involved in the fray. Pladna either fell or was knocked to the ground by Rose. Rose was charged with domestic abuse assault against Pladna. He claimed he acted with justification in that he acted to protect another person, his sister Krystal, from the use of unlawful force.

Before trial, the county attorney filed a motion in limine seeking to exclude evidence of prior convictions of several witnesses, including Pladna's prior conviction for child endangerment that resulted from her son having tested positive for illegal drugs. The motion to exclude Pladna's conviction was based on Iowa Rule of Evidence 5.403, exclusion of evidence if its probative value is substantially outweighed by the danger of unfair prejudice. Defense counsel's resistance was based on Iowa Rule of Evidence 5.609, prior convictions admitted as impeachment evidence. At a hearing on the motion, defense counsel argued,

Brittany Pladna actually put her child in harms way during this incident . . . which would go right along with the child endangerment charge, which would help the jury determine if she is actually telling the truth or if she's actually the aggressor in this case.

The district court ruled that Pladna's prior conviction should be excluded, stating, "The child endangerment conviction has little bearing on domestic assault. It has no bearing on veracity, and it could be substantially prejudicial." The court found that the probative value of this evidence was small and was substantially outweighed by the danger of unfair prejudice. Rose did not request a further ruling on the admissibility of Pladna's conviction for child endangerment.

Before the commencement of testimony, the court said to the prosecutor in the context of other evidence the State sought to exclude, "You can object at the time, but . . . understand the ruling on a motion in limine is just that. It's not final, it's an indication . . . ."

At trial, Pladna's sister, Danielle, testified that Rose punched Pladna in the face before she fell to the ground. Pladna testified that once she was on the ground, Rose repeatedly hit her. She stated that she also felt something hard hit her shoulder, though she did not see what it was because she had her hands blocking her face for protection. Pladna's friend Dymetri testified that he saw Rose kick Pladna's arm and face while she was on the ground. Sandy's neighbor was outside and witnessed the events. He testified that while Pladna was on the ground, Rose "hit her a couple times" and kicked her. He also testified that when he later told Rose he should not have kicked Pladna in the head, Rose replied that he had kicked her in the shoulder, not the head.

Rose testified that he pushed Pladna to protect Krystal and that Pladna fell when he pushed her. He also testified that he told the neighbor, "I don't know what I did, but if I kicked her, it wasn't in the face." Rose was then asked, "So you admit you may have kicked her?" He replied, "I might have, but I don't recall it."

The jury returned a verdict of guilty, along with a note stating that the jurors were "sickened by the image of this young child watching his family violently argue over him" and felt that "every adult present is guilty," excluding one witness.

Rose now appeals, arguing the district court abused its discretion in failing to allow him to present evidence of Pladna's conviction of child endangerment. Rose argues that if error was not preserved, his counsel was ineffective for failing to specifically argue that evidence of Pladna's child endangerment conviction should have been admitted because it was vital to his theory of defense. The State alleges that Rose failed to preserve error on this issue by failing to request a final ruling on the State's motion in limine and that his ineffective-assistance-of-counsel claim did not properly address the preservation infirmity. We find that error was preserved on the State's motion in limine as to Pladna's conviction since that part of the ruling was sufficiently definite and final. See *State v. Daly*, 623 N.W.2d 799, 800 (Iowa 2001). On the merits, we find the district court's decision to exclude the evidence was well within its discretion and that Rose is unable to show prejudice on his claim of ineffective assistance of counsel.

## II. Standard of Review

We will reverse the district court's decision on whether to admit evidence of other crimes only upon finding a clear abuse of discretion. *State v. Casady*, 491 N.W.2d 782, 785 (Iowa 1997). To the extent that Rose alleges ineffective assistance of counsel, our review is de novo. *Taylor v. State*, 352 N.W.2d 683, 684 (Iowa 1992).

## III. Merits

Iowa Rule of Evidence 5.609(a) provides for impeachment of a witness by evidence of a prior conviction:

For the purpose of attacking the credibility of a witness:

- (1) Evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to rule 5.403, if the crime was punishable by . . . imprisonment in excess of one year . . . .
- (2) Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

Iowa Rule of Evidence 5.403 provides, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury."<sup>1</sup>

Our supreme court has advised trial courts to assess the probative value of admitting evidence of a prior conviction in relation to its likely prejudice by considering four non-exclusive factors: (1) the nature of the conviction; (2) the conviction's bearing on veracity; (3) the age of the conviction; and (4) its

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<sup>1</sup> Neither party raises Iowa Rule of Evidence 5.404(a), which permits evidence of a "pertinent" character trait of a victim offered by an accused, limited by subsection (b), which does not permit evidence of other crimes to prove that the person acted in conformity with the prior crime. We make no findings with regard to that rule.

tendency to improperly influence the jury. *Daly*, 623 N.W.2d at 802; *State v. Axiotis*, 569 N.W.2d 813, 816 (Iowa 1997).

Rose sought to impeach Pladna with her 2007 conviction for child endangerment, a crime punishable by imprisonment in excess of one year. Rose argues on appeal that this evidence should have been admitted because it suggests that Pladna was not a credible witness and because it supports his assertion that Pladna was the aggressor in this incident, a disputed fact vital to his claim of justification. The child endangerment conviction stemmed from an incident in which Pladna's child tested positive for drugs. The district court properly weighed this evidence and determined that the nature of the crime of child endangerment had little bearing on the assault case in which the parties were involved, was not probative of veracity, and had a high tendency to improperly influence the jury. Although Pladna's conviction was fairly recent, the district court acted well within the range of its discretion in ruling that any probative value on credibility did not outweigh its tendency to confuse or inflame the jury. Admission of this evidence had a high propensity to lead to confusion of the issues, mislead the jury, or result in unfair prejudice. The nature of the conviction could lead the jury to consider whether Pladna was a fit parent and distract them from the real issue of whether the domestic abuse occurred. Evidence that Pladna's child had been exposed to a controlled substance could be highly prejudicial to her. *See generally State v. Liggins*, 524 N.W.2d 181, 188-89 (Iowa 1994) (finding admission of evidence of cocaine delivery and distribution inherently prejudicial in murder case because it appealed to the jury's instinct to punish drug dealers).

Turning to Rose's claim that his counsel provided constitutionally deficient representation by failing to argue that Pladna's conviction for child endangerment was vital to his defense of justification, we find he is unable to prove prejudice. Several witnesses other than Pladna, including a neighbor unrelated to either family, testified that Rose hit and/or kicked Pladna while she was lying on the ground. There was credible evidence other than Pladna's testimony that Rose was not acting in defense of himself or others. Pladna's child endangerment conviction does not make it more or less likely that Pladna was the aggressor in this assault and had very little, if any, probative value on Rose's defense of justification.<sup>2</sup>

Rose cannot prove the prejudice element required to succeed on his alternative claim of ineffective assistance. See *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001) (stating that to succeed on a claim of ineffective assistance of counsel, appellant must prove counsel's performance resulted in prejudice).

**AFFIRMED.**

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<sup>2</sup> We note that Rose's defense of justification related to protection of his fifteen-year-old sister, Krystal, and not of Pladna and Rose's child.